



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket No. USCG-2020-0540]**

**RIN 1625-AA00**

### **Safety Zone; Oakland Ship-to-Shore Crane Arrival, San Francisco Bay, Oakland, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the San Francisco Bay during the transit of the M/V ZHEN HUA 35, scheduled to arrive between December 6, 2020 and December 20, 2020. This safety zone is necessary to protect personnel, vessels, and the marine environment from heavy equipment which will be extending more than 200 feet over the water from the vessel. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port San Francisco or a designated representative.

**DATES:** This rule is effective from 12:01 a.m. on December 6, 2020 until 11:59 p.m. on December 20, 2020, or as announced via Broadcast Notice to Mariners.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0540 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail LT Jennae Cotton, Waterways Management, U.S. Coast Guard; telephone (415) 399-3585, e-mail [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port San Francisco
DHS	Department of Homeland Security
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until November 20, 2020. The Coast Guard must establish this safety zone by December 6, 2020 and lacks sufficient time to provide a reasonable comment period and consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the ***Federal Register***. It is contrary to the public interest to delay the effective date of this rule because we need to have the safety zone in place to protect vessels and persons from the dangers associated with the crane arms extending over the water from the M/V ZHEN HUA 35 between December 6, 2020 and December 20, 2020 while the vessel is shoreward of the line

drawn between San Francisco Main Ship Channel Lighted Bell Buoy 7 and San Francisco Main Ship Channel Lighted Whistle Buoy 8 until the vessel arrives at Berth 57 in Oakland, CA.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the transit of the M/V ZHEN HUA 35 between December 6, 2020 and December 20, 2020, will be a safety concern for anyone within a 500-foot radius of the vessel during its transit to Oakland, Berth 57, while the vessel is within the San Francisco Bay and areas shoreward of the line drawn between San Francisco Main Ship Channel Lighted Bell Buoy 7 and San Francisco Main Ship Channel Lighted Whistle Buoy 8 (LLNR 4190 & 4195) in positions 37°46.9' N, 122°35.4' W and 37°46.5' N, 122°35.2' W, respectively. For this reason, a safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the M/V ZHEN HUA 35 during its transit to Berth 57 at the Oakland International Container Terminal in Oakland, CA.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from 12:01 a.m. on December 6, 2020 until 11:59 p.m. on December 20, 2020, during the inbound transit of the M/V ZHEN HUA 35. While the M/V ZHEN HUA 35 is within the San Francisco Bay and areas shoreward of the line drawn between San Francisco Main Ship Channel Lighted Bell Buoy 7 and San Francisco Main Ship Channel Lighted Whistle Buoy 8 (LLNR 4190 & 4195) in positions 37°46.9' N, 122°35.4' W and 37°46.5' N, 122°35.2' W, respectively, the safety zone will encompass the navigable waters around and under the vessel, from surface to bottom, within a circle formed by connecting all points 500 feet out from the vessel. The safety zone is needed to protect personnel, mariners, and vessels from hazards associated

with ship-to-shore crane arms which will extend more than 200 feet out from the transiting vessel. This loading configuration is necessary in order for the vessel to pass safely under the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge.

The M/V ZHEN HUA 35 will make a temporary stop in Anchorage 9 during its transit to the Oakland International Container Terminal. The vessel will stop temporarily for the crew to make adjustments to the cargo so the vessel can safely moor at Berth 57 in Oakland, CA. The cargo adjustments will include raising three ship-to-shore crane arms to an upright position which will facilitate mooring.

The effect of the safety zone is to restrict navigation in the vicinity of the M/V ZHEN HUA 35. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. "Designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone. This regulation is needed to keep vessels away from the immediate vicinity of the M/V ZHEN HUA 35 to ensure the safety of mariners and transiting vessels.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a

“significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. This safety zone impacts a 500-foot-radius area of the San Francisco Bay in San Francisco, CA for a limited duration. While the safety zone encompasses a two week period to account for uncertain transit delays of the M/V ZHEN HUA 35, the safety zone will only be enforced for the duration of the vessel’s inbound transit, which is expected to last less than 24 hours. Vessels desiring to transit through the safety zone may do so upon express permission from the COTP or the COTP’s designated representative.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please

contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone which prevents entry to a 500-foot radius area of the San Francisco Bay for a limited period of time during a vessel's inbound transit. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of Department of Homeland Security Directive 023-01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11-035 to read as follows:

#### **§165.T11-035 Safety Zone; Oakland Ship-to-Shore Crane Arrival, San Francisco Bay, Oakland, CA**

(a) *Location.* The following area is a safety zone: all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 500 feet out from the vessel, M/V ZHEN HUA 35, during the vessel's inbound transit from a line drawn between San Francisco Main Ship Channel Lighted Bell Buoy 7 and San Francisco Main Ship Channel Lighted Whistle Buoy 8 (LLNR 4190 & 4195) in positions 37°46.9' N, 122°35.4' W (NAD 83) and 37°46.5' N, 122°35.2' W (NAD 83), respectively, to Berth 57 at the Oakland International Container Terminal in Oakland, CA.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.



(c) *Regulations.* (1) Under the general safety zone regulations in subpart B of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

(d) *Enforcement period.* This section will be enforced between 12:01 a.m. on December 6, 2020 until 11:59 p.m. on December 20, 2020 during the inbound transit of the M/V ZHEN HUA 35, or as announced via Broadcast Notice to Mariners.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Howard H. Wright  
Captain, U.S. Coast Guard  
Alternate Captain of the Port, San Francisco